IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 23672 of 2003

Between:

T.Shamitha W/o. Late Sri T.Vinod Kumar, aged 35 years,
Occupation: Business, R/o. 10-2-8, West Marredpally, Secunderabad.

..... PETITIONER

AND

1 Municipal Corporation of Hyderabad, BRKR Buildings,

Tank Bund Road, Hyderabad, represented by the Commissioner.
2 The Assistant City Planner, SD, Ward-7, Municipal Corporation of

Hyderabad, Town Planning Section, Secunderabad Zone.
3 C.Krishna S/o. Late C.Venkanna, R/o. 7-3-678, R.P.Road,

Ghasmandi Cross Roads, Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or Direction more particularly in the nature of Writ of Mandamus or otherwise declaring that the impugned notice bearing No.3755/TP/MCH/SD/W7/2003 dated 6-11-2003 issued by the Respondents No.1 and 2 under the purported exercise of power under Section 459 of the H.M.C. Act is wholly illegal, arbitrary and *ultra vires* the powers of the Respondents No.1 and 2 and consequently declare the same as unenforceable and forbear the Respondents No. 1 & 2 from acting in any manner in furtherance of the said impugned notice bearing No.3755/TP/MCH/SD/W7/2003 dated 6-11-2003.

Counsel for the Petitioner: SMT.KALPANA EKBOTE

Counsel for the Respondent Nos.1 & 2: SMT.G. JYOTHI KIRAN,

STANDING COUNSEL FOR M.C.H.,

Counsel for the Respondent No.3: MR.M.KRISHNA MOHAN RAO

The Court made the following:

ORDER:

The petitioner is a tenant of the premises No.7-3-680 in Ghasmandi Cross Roads, R.P. Road, Secunderabad. The third respondent is owner of the premises. It is the case of the petitioner that at the instance of the third respondent, the first respondent initiated action under Section 456 of the Hyderabad Municipal Corporation Act, 1955 (the Act, for brevity) and issued a notice under Section 459 of the Act directing the petitioner to vacate the building on the ground that the said building is allegedly in a dilapidated condition. The petitioner also contends that facts and circumstances do not exist warranting the exercise of power under Section 456 of the Act, and issue of notice is tainted with legal malice.

This Court while admitting the writ petition came to *prima facie* conclusion that there is no subjective satisfaction with regard to the safety of the building in question and accordingly while admitting the writ petition, stayed all further proceedings pursuant to the impugned notice. The third respondent, thereafter, moved WVMP No.125 of 2004 praying this Court to vacate the interim order. While asserting that he is the owner of the building, the third respondent states that the respondent Nos.1 and 2 inspected the building and after having come to conclusion that the building has developed cracks and are likely to collapse at any moment causing danger to the inmates, issued the notice under Section 459 of the Act. All other allegations made in the petitioner's affidavit are denied.

Though the Interlocutory application is listed today, the matter was heard finally with the consent of the learned Counsel for the writ petitioner, learned Standing Counsel for the Municipal Corporation of Hyderabad and learned Counsel for the third

respondent.

When the WVMP came before this Court, this Court directed the learned Standing Counsel for Municipal Corporation of Hyderabad to produce the record. The record was produced on 7.9.2004. A perusal of the record would show that the second respondent herein, purporting to take action on the representation filed by the wife of the third respondent, inspected the premises and recorded his report as under:

Submitted:

The representation regarding the dilapidated condition of the building vide premises No.7-3-677, 678, 679 and 680 situated at Ghasmandi, R.P. Road, Secunderabad received from Smt. C. Lakshmi dated 20.10.2003 may kindly be perused.

Smt. C. Lakshmi has stated that the above building is constructed approximately 70 years back and has become very old and is likely to fall. That the tenants are not vacating the premises and also not paying the rents and creating harassments. Smt. Sri Lakshmi has finally requested to dismantlethe above said building.

Inspected the building vide premises No.7-3-677, 678, 679 and 680 situated at Ghasmandi, R.P. Road, Secunderabad. This building is consisting of ground and first floor and seems to be very old one. Plastering of the walls and the roof is peeled off at many places and rainwater is also percolating from many places of the roof and cracks on some places have also been noticed. The first floor of the building is unoccupied and the ground floor is consisting of four shops in which three shops were occupied by two different tenants and one is unoccupied.

In view of the above, the notice under Section 459 of the HMC Act, 1955 is prepared and herewith enclosed and subject to approval the same may be served upon the owner as well as the tenants and this file may be forwarded to EE Div. XI for taking further necessary action in the matter.

Submitted for orders please.

Again when the file was circulated to the Executive Engineer, Division-XI, who conducted inspection on 12.11.2003 and recorded his findings as under:

In response to the above para (1) to (4) the premises was inspected on 12.11.2003, it is observed that the existing building consist of Ground and 1st floor and it is a old one. The building is constructed with load bearing brick wall with lime mortor and sack arch roof. The 1st floor of the building is unoccupied. The wall and roof cracks are observed certain places. The 1st and Ground floor walls and roof plastering was peeled off at few places.

In view of the above facts, it is observed that the building is in dilapidated condition.

Submitted for taking further necessary action.

Thereafter, based on such representations, the impugned notice was issued. As seen from the reports, before inspection of the premises no notice was issued to the petitioner. As rightly contended by the learned Counsel for the petitioner though such a requirement is not found in the relevant provisions of the Act, when there is a dispute as to whether a building is in a dilapidated condition requiring action under Section 456 read with 459 of the Act, the Inspecting authority ought to have issued a notice to the occupant of the building, who is disputing the safety of the building. For that reasons alone, this Court is of considered opinion that interest of justice would

be met if a direction is issued to the Executive Engineer, Division-XI to inspect the building after giving a notice to the petitioner and the third respondent herein, and take appropriate decision in the matter. The exercise may be completed within a period of four weeks. Till then, the impugned notice is kept in abeyance. It is made clear that this order will hold good insofar as the premises in possession of the petitioner bearing No.7-3-680, Ghasmandi Cross Roads, R.P. Road, Secunderabad.

The writ petition, with the above observations and directions, is disposed of.

_____

September 28, 2004. **V.V.S. RAO, J**

YS

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Commissioner, Municipal Corporation of Hyderabad,

BRKR Buildings, Tank Bund Road, Hyderabad.

2. The Assistant City Planner, S.D. Ward-7,

Municipal Corporation of Hyderabad,

Town Planning Section, Secunderabad Zone.

3. The Executive Engineer Division-XI, MCH Building, BRKR Buildings,

Tankbund Road, Hyderabad.

4. Two C.D. copies.